### HOUSE RESEARCH ORGANIZATION • TEXAS HOUSE OF REPRESENTATIVES

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# HOUSE RESEARCH ORGANIZATION

daily floor report

Thursday, April 23, 2015 84th Legislature, Number 56 The House convenes at 10 a.m.

Eighteen bills are on the daily calendar for second-reading consideration today. They are listed on the following page.

The House will consider a Local, Consent, and Resolutions Calendar as well as a Congratulatory and Memorial Calendar.

Alma (U. Allen) Alma Allen

Chairman 84(R) - 56

### HOUSE RESEARCH ORGANIZATION

Daily Floor Report Thursday, April 23, 2015 84th Legislature, Number 56

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SUBJECT: Requiring block scheduling for certain public junior college programs

COMMITTEE: Higher Education — committee substitute recommended

VOTE: 8 ayes — Zerwas, Howard, Alonzo, Crownover, Martinez, Morrison,

Raney, C. Turner

0 nays

1 absent — Clardy

WITNESSES: For — Justin Yancy, Texas Business Leadership Council; (Registered, but

did not testify: Nelson Salinas, Texas Association of Business; Courtney

Boswell, Texas Institute for Education Reform)

Against — None

On — Bruce Leslie, Alamo Colleges; Roberto Zarate, Community College Association of Texas Trustees; Steve Smith, El Paso Community College; Richard Rhodes, Texas Association of Community Colleges; Richard Moore, Texas Community College Teachers Association; (*Registered, but did not testify*: Rex Peebles, Texas Higher Education Coordinating Board; Juan Mejia, Mike Metke, and Kim Russell, Tyler Junior College)

DIGEST:

CSHB 1583 would require public junior colleges in the state to establish a block schedule curriculum for each of their career and technology, allied health, or nursing associate degree or certificate programs. Courses required for enrollment as a full-time student in these disciplines would be offered in blocks, such as morning, full-day, afternoon, evening, or weekend blocks.

The bill also would require each junior college to publish available block schedules before the start of each semester in all applicable associate degree or certificate programs offered. The Texas Higher Education Coordinating Board could adopt rules necessary to administer the changes under CSHB 1583.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2015, and would apply beginning with the fall 2016 semester.

# SUPPORTERS SAY:

CSHB 1583 would improve postsecondary education completion rates and time-to-degree metrics by establishing block scheduling for certain programs at the state's community colleges. Unlike traditional college course schedules, in which students meet for class two or three times per week during a semester, block scheduling delivers instruction in predictable blocks of classes that meet for longer periods of time on fewer days overall. Many career and technical and allied health course offerings in Texas are delivered in this manner, and this bill would benefit community college students by increasing the availability of offerings delivered under a block schedule curriculum.

About half of all community college students currently attend school parttime while balancing work or family-care responsibilities. Taking classes that meet across multiple days, times, and semesters, all while juggling other obligations, can lead to slow or low postsecondary completion rates for students, which can cost more in tuition for students and in financial aid for the state. This bill would increase schedule predictability and help more students attend class full time and complete their degrees on time.

CSHB 1583 would increase competitiveness in the state's workforce and in education attainment. Texas has a growing need for more college-educated and trained individuals, and this bill would help the state develop this workforce more quickly. Additionally, block scheduling has emerged as a nationally recognized best practice, and it is a model recommended by both Gov. Abbott and the Texas Higher Education Coordinating Board. Other states have realized notable gains in graduation rates when using block scheduling, and Texas should join the ranks of national leaders on this front. Texas State Technical College and some other community colleges in Texas already have started to implement block scheduling. Establishing block scheduling would be a student-centered change to help schools better serve students and accommodate their busy lives. Block scheduling could foster stronger peer relationships because students spend

more time studying a comprehensive subject area together, forming a cohort and a learning community. This cohort mentality can boost students' academic experiences, leading students to form study groups, carpool together, and share other resources.

While HB 1538 as introduced would have required all public junior college degree and certificate programs to offer block scheduling, the substitute instead would be narrowly tailored to three areas of study for which block scheduling has proven to be particularly effective. In addition, many allied health and nursing programs in Texas already use block scheduling. CSHB 1583 would help more colleges phase in this approach and would address any challenges that might develop. While there may be challenges to implementing block scheduling for all disciplines, students, and institutions, this bill would be a good way to begin studying and tackling those issues.

OPPONENTS SAY:

By requiring junior colleges to introduce block scheduling for each of their career and technology associate degree or certificate programs, CSHB 1583 would require community colleges to do too much too soon. Many junior college professors also teach part-time, and block scheduling might be a poor fit for them. Moreover, funding for community colleges still has not fully recovered from recent cuts, and community colleges are being asked to do more with less. The costs, administrative burden, and funding implications of implementing block scheduling are unknown. For example, block scheduling could impact contact-hour funding.

The bill would mandate a practice that might not benefit all students and institutions. Block schedules could exacerbate issues with students missing school, struggling in a certain subject area, or dropping out of courses. Students in block-scheduled courses also might not form the peer relationships that they would if they saw their classmates more often for shorter periods of time.

OTHER
OPPONENTS
SAY:

CSHB 1583 should implement block scheduling as part of a larger strategy of guided academic pathways, aligning high school with community college, and community college with baccalaureate programs. This would help junior college students plot out long-term education and career goals in a way that would maximize the effectiveness of a block

schedule curriculum.

NOTES:

The author plans to offer a floor amendment that would require at least 50 percent of career and technology associate degree or certificate programs to offer block scheduling beginning with the fall 2016 semester.

HB 3014 Parker, Burkett (CSHB 3014 by Flynn)

SUBJECT: Allowing "pay for success" contracts for state agencies

COMMITTEE: Investments and Financial Services — committee substitute recommended

VOTE: 6 ayes — Parker, Longoria, Capriglione, Flynn, Landgraf, Stephenson

0 nays

1 absent — Pickett

WITNESSES: For — Madeline McClure, TexProtects (Texas Association for the

Protection of Children); (Registered, but did not testify: Michelle Corson,

Champion Capital; Knox Kimberly, Lutheran Social Services of the South; Erica Lee Carter, Nurse Family Partnership; Nirav Shah, Social Finance; Sarah Crockett, Texas Court Appointed Special Advocates;

Melody Chatelle, United Ways of Texas; Adrianna Torres-Garcia)

Against — (Registered, but did not testify: Harrison Hiner, Texas State

Employees Union)

On — Joe Hamill, American Federation of State, County, and Municipal

Employees; Jennifer Carreon, Texas Criminal Justice Coalition

BACKGROUND: Success contracts, also known as pay for performance contracts or social

impact bonds, are contracts made between a governmental entity and a private company where payment of all or part of the contract's value is dependent on the achievement of certain performance measures. If those performance measures are not achieved, then some or all of the payment

may be withheld.

The House Committee on Corrections, as one of its 2014 interim charges, was directed in the area of juvenile justice to analyze and make

recommendations on outcome-based financing models that would allow the state to partner with private companies that would cover the upfront

costs and assume performance risk to divert youths into cost-effective

programs and interventions.

DIGEST:

CSHB 3014 would create a trust fund capped at \$50 million existing outside the state treasury with the comptroller as the trustee. The fund would consist of money appropriated by the Legislature and could be used to make success contract payments and for any expenses incurred in administering the trust fund or success contracts.

The bill would allow the comptroller and a state agency to jointly enter into a success contract with any person, as long as the terms provided:

- that a majority of the contract payment was conditioned on the contractor meeting or exceeding certain performance measures;
- a defined objective procedure by which an independent evaluator would determine whether the specified performance measures had been met or exceeded; and
- a schedule of the amounts and timing of payments that indicated the specific payment amounts conditioned on meeting or exceeding the specified performance measures.

A success contract could be executed only if:

- the comptroller and the Legislative Budget Board certified that the proposed contract was expected to result in significant performance improvements and budgetary savings if the performance targets were achieved; and
- enough money was in the trust fund to make all payments that would come due.

The bill would require the comptroller to make payments for success contracts only from the trust fund and only in accordance with the terms of the success contracts. Any money that was received from the contractor for penalties or overpayment would be returned to the trust fund. Any money that was in the trust fund that remained unpaid when the contract expired or was terminated would be returned to the state treasury or account from which the money originally was appropriated.

At the beginning of each regular session, the comptroller would present a report to the Legislature providing details about how successful each

success contract had been in achieving the specified performance measures, as well as details about proposed future success contracts.

The bill would authorize the comptroller to adopt rules as necessary to administer success contracts. The comptroller also could adopt joint rules with another agency that could be party to a success contract.

This bill would take effect September 1, 2015.

#### SUPPORTERS SAY:

CSHB 3014 would result in a significant improvement in the state's ability to innovate and address a variety of future challenges. By authorizing contracts for which payment would be contingent on success, this bill would allow agencies to contract with private entities to tackle tough social problems through inventive solutions without actually risking agency resources.

This bill would require the Legislative Budget Board and the comptroller to certify that the success contract would result both in significant performance improvement and in budgetary savings if the project met its goals. Fraud, therefore, would be unlikely because each contract would receive its own independent analysis conducted by the state agency, the comptroller, and the Legislative Budget Board.

Many social problems exist for which there is no surefire solution. Instead of attempting to innovate within the agency, success contracts would allow private entities to step in and try a variety of solutions without putting state resources at risk because payment would happen only if the targets were achieved.

Success contracts could result in major achievements in tackling difficult social problems. One success contract of this type was the Peterborough Social Impact Bond, which gave private organizations the opportunity to try various strategies to reduce recidivism of some prisoners. The program resulted in an 8.4 percent reduction in recidivism over and above what likely would have happened without the success contract.

Texas has many areas for which success contracts could be useful, including early childhood and prenatal care programs, as well as elder

care and home visitation projects. In fact, one of the 2014 interim charges to the House Committee on Corrections recommended developing and supporting the use of success contracts in Texas, specifically within the Texas Juvenile Justice Department.

Profit is a necessary incentive for the partnering private entity to innovate and take risks. Unless the organization believed that it would make a profit on the contract, it would have no reason to accept the contract in the first place. A competitive market would ensure that private entities' profits were not excessive.

Because of the variance in the types of contracts that might arise, any transition plan to make successes permanent would be handled by the agency on a contract-by-contract basis and would not need to be codified by the Legislature.

## OPPONENTS SAY:

CSHB 3014 would create a fund to be used in conjunction with complicated finance schemes that could be vulnerable to fraud. This would present a need for protections and specific provisions within the legislation. The terms of success contracts should be carefully defined so that they did not achieve objectives that the state agency already knew were attainable through conventional means. For instance, a contractor could attempt to profit by targeting a specific population that would be easiest to serve, rather than one for which success in improving the welfare of the population would be harder to demonstrate.

Any legislation enabling success contracts should not displace current agency personnel. Because the private entity would be paid only if the target was achieved, success contracts inherently mean that the state would pay more than the amount the project actually cost because the risk of failure is transferred to the private entity. Success contracts should be aimed at going above and beyond the current level of performance and not replacing current agency efforts.

The Legislature should consider limiting returns on success contracts. These contracts should function as a tool to achieve a social good rather than merely as a means for private corporations to profit from state funds.

The Legislature also should consider how to integrate the programs into a permanent framework. Once the success contract ended, a transition plan would need to be in place so that the program could be integrated into the agency and its benefits sustained.

4/23/2015

HB 1607 Collier, et al.

SUBJECT: Increasing the amount of temporary income benefits for certain employees

COMMITTEE: Business and Industry — favorable, without amendment

VOTE: 7 ayes — Oliveira, Simmons, Collier, Fletcher, Rinaldi, Romero, Villalba

0 nays

WITNESSES: For — Rick Levy, Texas AFL-CIO; Fabiola Flores, Texas Worker

Advocates; (*Registered, but did not testify*: Chris Jones, Combined Law Enforcement Associations of Texas (CLEAT); Ashley Harris, Texans Care for Children; Cathy Dewitt, Texas Association of Business; Nate Walker, Texas Family Council; Jo Betsy Norton, Texas Mutual Insurance

Company; Maxie Gallardo, Workers Defense Project)

Against — None

On — Todd Holt, State Office of Risk Management; (*Registered, but did not testify*: Jessica Corna, Office of Injured Employee Counsel; Amy Lee, Texas Department of Insurance, Division of Workers' Compensation; DC Campbell, Texas Department Insurance)

**BACKGROUND:** 

According to Labor Code, sec. 408.101, which is under the Texas Workers' Compensation Act, employees are entitled to temporary income benefits if they have a disability and have not attained maximum medical improvement.

Sec. 408.103(a) establishes the amount of a temporary income benefit for certain workers under the Workers' Compensation Act. That amount is calculated by subtracting the employee's weekly earnings after the injury from the employee's average weekly wage, then applying a certain percentage based on the employee's hourly wage. Employees who earn less than \$8.50 per hour receive 75 percent of the above calculation for the first 26 weeks of receiving the benefit. After 26 weeks, those employees receive 70 percent. Employees who earn a higher hourly wage receive 70 percent for every week they receive a benefit.

DIGEST:

HB 1607 would increase the maximum hourly wage threshold under which certain employees were entitled to certain temporary income benefits under the workers' compensation system.

Using the same method as in current law, the bill would increase from \$8.50 to \$10 the maximum hourly wage that an employee could earn to receive, for the first 26 weeks of benefits, 75 percent of the amount computed by subtracting the employee's weekly earnings after the injury from the employee's average weekly wage.

The bill would take effect September 1, 2015, and would apply only to claims for temporary income benefits based on an injury that occurred on or after that date.

SUPPORTERS SAY:

HB 1607 would provide a more appropriate amount of temporary income benefits for certain lower-wage workers after they were injured at work. The bill would increase these benefits only for those currently earning an hourly wage between \$8.51 and \$10 and only for 26 weeks. The increase in benefits would help those employees pay their bills and cover other expenses while they were injured and unable to return to work.

The \$8.50 ceiling amount for those who qualify to receive 75 percent has not been changed since the section was enacted in 1993. Even though the minimum wage has increased since that time, this ceiling has not, and it is time to update it.

OPPONENTS

No apparent opposition.

SAY:

NOTES:

The companion bill, SB 901 by Eltife, was passed by the Senate on

April 9.

4/23/2015

HB 3227 Hernandez, J. Rodriguez (CSHB 3227 by Stephenson)

SUBJECT: Allowing retirees to seek election to the ERS board of trustees

COMMITTEE: Pensions — committee substitute recommended

VOTE: 7 ayes — Flynn, Alonzo, Hernandez, Klick, Paul, J. Rodriguez,

Stephenson

0 nays

WITNESSES: For — Maura Powers, AFSCME Texas Retirees; Elizabeth Blount,

Retired State Employees Association; Garry McVea, Texas State Employees Union; (*Registered, but did not testify*: Cynthia Hayes, AFSCME Council 12; Harrison Hiner, Texas State Employees Union; Deborah Ingersoll, Texas State Troopers Association; Dick Lavine)

Against - None

BACKGROUND: The Employees Retirement System of Texas (ERS) administers benefit

programs for active and retired state employees, including the retirement system and health insurance programs. A six-member board of trustees oversees ERS. Three board members are appointed, one each by the governor, House speaker, and Texas Supreme Court chief justice. The other three are elected by ERS active members and retirees. To be eligible for election, a person must be an active member. Both appointed and elected members serve staggered six-year terms, with the terms of appointees expiring on August 31 of each even-numbered year and those

of elected members on August 31 of each odd-numbered year.

DIGEST: CSHB 3227 would change Government Code, sec. 815.003 to permit one

of the three elected members of the ERS board to be either a retiree or an active member. The remaining two elected members would remain as active members and could not be employed by the same agency or

department as another elected member.

The bill would take effect September 1, 2015, and would apply only to an

ERS election that occurs on or after that date.

SUPPORTERS CSHB 3227 would allow retirees to run for one of three elected seats on

SAY:

the Employees Retirement System of Texas (ERS) governing board and give them an opportunity to have a stronger voice in a system their contributions as employees helped to sustain.

State retirees currently may vote for the three elected positions on the ERS board, but are not eligible to stand for election, even though the board makes important decisions that have a direct impact on retirees. For example, changes to the health care plan can have a major impact on someone who is retired and living on a fixed income. Retirees make up a significant portion of the membership served by ERS and should not be excluded from important policymaking decisions.

The bill would not set aside a seat for a retiree but simply would allow a retiree to compete for one of three member positions. Retirees currently constitute the vast majority of voters in ERS board elections, an indication of their strong interest in the system. There is evidence of support among active members for including a retiree on the board. In fact, all three candidates for a recent board seat said they would support including a retiree on the board.

Retired state employees would bring years of experience and commitment to government to their board service. Concern about a divergence of interests between active and retired members is overblown because both current employees and retirees want to strengthen the pension system and improve health insurance programs. The potential for ERS trustees to prioritize one class of members over another is present in the current system. For example, active employee members could desire to increase their take-home pay by lowering their contribution. Such self-motivated decisions have not occurred with employees who serve on the board and would be even less likely to happen with one retiree member on the board.

Other large pension systems in Texas have retirees on their governing boards. The statewide Texas County and District Retirement System has four retirees on its nine-member appointed board. One of the nine trustees for the Teacher Retirement System of Texas is appointed by the governor from a list of retired member candidates nominated by retirees.

This bill is a result of input from ERS staff and stakeholders, and there is

no reason to wait for the Sunset review before approving this slight change to the ERS board.

OPPONENTS SAY:

The ERS board composition is a carefully crafted balance of elected and appointed trustees that has been working well for more than 40 years. Employee representatives have fairly and effectively represented both active and retired members.

A board member who is retired could prioritize the interests of retirees over the health of the system as a whole in making decisions that could give retirees a cost-of-living increase or an additional paycheck. Changes made to ERS in recent legislative sessions have created different tiers of benefits depending on when an employee was hired. As a result, some newer state employees are unlikely to ever receive the generous benefits now enjoyed by retirees and those soon to be retired. Allowing retirees to join the ERS board could lead to additional inequities as retirees might be presumed to be interested in preserving or increasing their own benefits rather than the long-term health and sustainability of the fund.

The structure of the ERS board likely will be scrutinized when the agency undergoes Sunset review in the 2016-17 cycle. It would be better to wait for that review before changing the board structure.

NOTES:

The Senate companion bill, SB 1146 by Watson, which is similar to CSHB 3227, was referred to the Senate State Affairs Committee on March 17.

HB 3522 Longoria

SUBJECT: Requiring showing of photo ID for certain stored-value card purchases

COMMITTEE: Investments and Financial Services — favorable, without amendment

VOTE: 7 ayes — Parker, Longoria, Capriglione, Flynn, Landgraf, Pickett,

Stephenson

0 nays

WITNESSES: For — Karen Neeley and Stephen Scurlock, Independent Bankers

Association of Texas; (Registered, but did not testify: Melodie Durst,

Credit Union Coalition of Texas; Don Jones, Firstmark Credit Union; Jeff

Huffman, Texas Credit Union Association; Fred Hagerman)

Against — Ronnie Volkening, Texas Retailers Association; (*Registered*, *but did not testify*: Annie Spilman, National Federation of Independent Business/TX; Matt Burgin, Texas Food and Fuel Association; Justin Bragiel, Texas Hotel and Lodging Association; Marla Flint)

On — None

DIGEST: HB 3522 would require an individual to verify his or her identity when

purchasing or adding value to any stored value card in a point-of-sale

transaction.

Under the bill, a "card" would mean a credit card or debit card.

"Cardholder" would mean the person named on the face of a credit or debit card. "Photo identification" would mean a card or other document issued by a governmental entity that identified an individual and displayed

the individual's photograph.

HB 3522 would prohibit a merchant from accepting a credit or debit card for payment from someone buying or adding value to a stored value card if the individual attempting to pay with the credit or debit card did not verify his or her identity as the cardholder by showing photo identification. The individual presenting a card also could submit to the

merchant as proof of identity the electronic entry of a personal

identification number (PIN) associated with a credit or debit card or, for a credit card transaction, the individual's zip code.

If the merchant failed to verify the identity of the individual presenting the card for payment, and the cardholder did not authorize the credit or debit card transaction, then HB 3522 would make the merchant liable to the cardholder or the card-issuing financial institution for all losses attributed to that failure.

The bill would take effect September 1, 2015.

#### SUPPORTERS SAY:

HB 3522 would significantly cut down on fraudulent purchase of stored-value cards, such as gift cards, with stolen credit or debit cards by requiring merchants to simply check the photo ID of the person presenting the credit or debit card at the time of the transaction or requiring other verification of the person's identity. This bill would make it more difficult for criminals to use stolen cards and would protect consumers and financial institutions from significant losses.

By requiring merchants to check identification only when a person tried to buy or add value to a gift card, HB 3522 would be simpler and more effective than existing safeguards designed to protect against the costs and hassle associated with credit or debit card theft. Under current consumer protection laws, such as the Truth in Lending and Electronic Fund Transfer Act, consumers can avoid losses that result from the theft of their cards only by being alert in checking their statements and reporting fraudulent transactions to the bank. Consumers bear the burden of complying with rules regarding unauthorized transactions on their accounts, and banks are left to cover resulting losses and to re-issue stolen cards. HB 3522 would protect against those negative consequences by requiring merchants who accept credit and debit cards to carry out basic identity verification procedures.

Any burden placed on merchants under HB 3522 would be minimal and necessary to prevent the purchase of stored value cards with stolen credit or debit card information. Checking a photo ID is a quick process that does not slow down a cashier line, and not taking this simple step places a burden on consumers and their banks. Retailers have an obligation to

protect the credit card transaction system that helps support their businesses. Many merchants already are taking these steps to identify cardholders, and HB 3522 simply would put this procedure into statute for those few merchants who do not already observe these practices.

While EMV cards that include a PIN and chip are more secure, transitioning to EMV cards in the United States would not prevent the use of stolen cards. An unauthorized charge on a stolen EMV card still could be processed, and the identity of the cardholder would not be verified until after the fraudulent transaction was completed.

# OPPONENTS SAY:

In attempting to help consumers and financial institutions, HB 3522 could harm retailers. The bill would shift a burden and cost to retailers by making them liable for losses and imposing procedural burdens that would slow down their transaction times for each sale. It would not address the entire problem and would leave too many gaps in statute that would allow criminals to continue using stolen credit and debit cards for gift card purchases. Allowing merchants to require only a zip code from an individual who presents a card for purchase would be too broad and permissive because some small counties may have only one zip code.

Requiring merchants to ask for photo identification could be asking merchants to break the agreements they sign with credit card companies. Under these agreements, merchants cannot refuse to complete a transaction if an individual refuses to present a photo ID. Instead of the measures proposed in HB 3522, penalties should be placed on credit card issuers responsible for these card agreements.

### OTHER OPPONENTS SAY:

Although the bill intends to address a serious problem in consumer protection, HB 3522 would not be the most effective remedy to solve the problem of criminals using stolen credit or debit cards to purchase stored-value cards. Changing the old magnetic stripe credit card system to one based on the use of EMV cards would be much more secure. EMV cards include an imbedded chip and use encryption to protect transaction data. As a result, data from these cards are harder to steal and any data obtained are less valuable. This system is set to be in place by October of this year and would better solve the problems this bill is trying to cure.

NOTES: HB 3522 is similar to SB 1778 by Menéndez, which was referred to the

Business and Commerce Committee on March 24.

4/23/2015

Raney (CSHB 3442 by Capriglione)

HB 3442

SUBJECT: Creating a civil penalty for surcharges on debit and stored-value cards

COMMITTEE: Investments and Financial Services — committee substitute recommended

VOTE: 6 ayes — Parker, Longoria, Capriglione, Flynn, Landgraf, Stephenson

0 nays

1 absent — Pickett

WITNESSES: For — Stephen Scurlock, Independent Bankers Association of Texas;

(Registered, but did not testify: Melodie Durst, Credit Union Coalition of Texas; John Heasley, Texas Bankers Association; Jeff Huffman, Texas

Credit Union Association)

Against — Ronnie Volkening, Texas Retailers Association

BACKGROUND: HB 3068 by Menéndez, enacted by the 83rd Legislature in 2013, amended

Finance Code, ch. 59 to prohibit merchants from adding a surcharge to

purchases made with a debit or a stored-value card.

DIGEST: CSHB 3442 would transfer Finance Code, ch. 59, subch. E, which

prohibits surcharges on debit and stored-value cards, to Business and

Commerce Code, 604A and would add an enforcement mechanism to the

prohibition.

A person who knowingly violated the surcharge prohibition would be liable for a civil penalty not to exceed \$1,000. The Office of the Attorney General or the prosecutor in the county where the violation occurred could

seek fines or an injunction for a violation and could recover reasonable

expenses incurred during this process.

Before filing suit, the prosecuting attorney would be required to give the violators notice of their noncompliance and liability. A violator who complied with the law within 30 days after the notice no longer would be liable. A person who previously had received notice of noncompliance would not in the future be entitled to receive notice of noncompliance or

the opportunity to cure the noncompliance.

The bill would define a surcharge as an increase in the price charged for a buyer who paid with a debit or stored value card that was not imposed on a buyer who paid by other means. A discount for paying with cash would not be considered a surcharge.

The bill would take effect September 1, 2015, and would apply only to the sale of goods or services occurring on or after that date.

### SUPPORTERS SAY:

CSHB 3442 would ensure that merchants complied with current law's prohibition on debit and stored-value card surcharges. The original prohibition on debit cards was meant to protect consumers from unexpected fees and to prevent large banks from collaborating with large retailers to steer clients to particular banks. Despite efforts by the Texas Department of Banking to educate the business community on the prohibition against surcharges, some businesses continue to impose surcharges on purchases made with debit and stored-value cards. The Department of Banking has received numerous complaints from consumers who discovered surcharges on their bank statements, but because these surcharges are typically 50 cents or less, it is hard to estimate how many surcharges go unnoticed.

The bill would protect small businesses. By providing businesses 30 days to cure a violation of the law, the bill would provide a safe harbor for merchants who simply were unaware of the law. The bill explicitly would permit cash discounts to consider the needs of businesses that rely on small purchases for the bulk of their revenue. By providing a definition of what constitutes a surcharge, the bill would clarify that dual pricing is legal, but surcharge fees are not.

# OPPONENTS SAY:

CSHB 3442 is an unnecessary measure that could lead to the imposition of substantial fines on small business owners. Most businesses that impose debit and stored-value card surcharges are businesses that receive the bulk of their revenue from small purchases, such as convenience stores. The banks that provide debit and stored value cards typically charge a fee of 22 cents plus 0.5 percent of the purchase price for every transaction. For businesses that depend on small purchases for the bulk of

their revenue, these fees can have a significant impact on the business's operating cost.

The businesses that impose surcharges often are trying to create a discount for paying with cash. HB 3442 should clarify what constitutes a cash discount and should provide more compliance guidance to merchants.

NOTES:

The Senate companion bill, SB 641 by Schwertner, was approved by the Senate on April 15.

4/23/2015

Zerwas (CSHB 2557 by Coleman)

HB 2557

SUBJECT: Providing certain authority to hospital districts

COMMITTEE: County Affairs — committee substitute recommended

VOTE: 8 ayes — Coleman, Farias, Burrows, Romero, Schubert, Spitzer,

Tinderholt, Wu

1 nay — Stickland

WITNESSES: For — Paul Leslie, Parkland; Burnie Burner, Parkland Hospital and

Hospitality System; Maureen Milligan, Teaching Hospitals of Texas; (*Registered, but did not testify*: Jocelyn Dabeau, Texas Captive Insurance Association; Don McBeath, Texas Organization of Rural and Community

Hospitals; Joe Garcia, University Health System)

Against — None

BACKGROUND: Health and Safety Code, ch. 281 authorizes certain counties to establish

hospital districts to provide medical aid and hospital care to the indigent

and needy persons residing in the district.

Under Health and Safety Code, sec. 281.0518, the Dallas County hospital district or its nonprofit affiliates may enter into a contract, collaborate, or enter into a joint venture or other agreement with a public or private entity to engage in certain activities related to selling or licensing technology or

intellectual property.

According to Insurance Code, ch. 964, a "captive insurance company" is an entity that holds a certificate of authority to insure the operational risks of the company's affiliates or risks of a controlled unaffiliated business. A "captive management company" is an entity that provides administrative

services to a captive insurance company.

DIGEST: CSHB 2557 would provide that the Dallas County hospital district or its

nonprofit affiliate could contract, collaborate, or enter into a joint venture or other agreement with a public or private entity that was nonprofit or for

profit to engage in certain activities related to selling or licensing

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technology. A nonprofit corporation formed by the hospital district could hold an ownership interest in one of these entities.

The bill also would permit a charitable organization created by a hospital district authorized under Health and Safety Code, ch. 281 to contract, collaborate, or enter into a joint venture or other agreement with a public or private entity whether the entity was nonprofit or for profit. The charitable organization could have an ownership interest in this entity. Charitable organizations would remain subject to applicable state and federal laws.

CSHB 2557 also would authorize a hospital district, a combination of districts, or a nonprofit corporation formed by a district or a combination of districts to further the purposes of the hospital district or districts, to form a captive insurance company or a captive management company to further the purposes of the hospital district or hospital districts.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2015.

### SUPPORTERS SAY:

CSHB 2557 would clarify the authority of hospital districts and their affiliates to enter into certain agreements. Agreements between non-statutorily created nonprofits and for-profit entities exist, but as statutorily created entities, hospital districts adhere to legislation. The law is unclear about the agreements hospital districts may enter into. Further, contracts between government and private entities are routine occurrences, and hospital districts explicitly should be authorized to participate in them.

The bill would provide a method for hospital districts to continue to improve their health care services. CSHB 2557 also would allow hospital districts to better manage and protect their value. Hospital districts are not explicitly permitted in code to contract with captive insurance companies in Texas. This bill would provide the statutory permission necessary to allow hospital districts to insure themselves in a way that is efficient and cost effective.

#### **OPPONENTS**

CSHB 2557 is unnecessary because hospital districts implicitly can enter

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SAY:

into agreements with for-profit entities to support their purpose of providing medical care for the indigent.

4/23/2015

Zerwas (CSHB 2559 by Coleman)

HB 2559

SUBJECT: Leasing and other real property agreements for certain hospital districts

COMMITTEE: County Affairs — committee substitute recommended

VOTE: 6 ayes — Coleman, Farias, Burrows, Romero, Spitzer, Wu

0 nays

3 absent — Schubert, Stickland, Tinderholt

WITNESSES: For — Paul Leslie, Parkland; (Registered, but did not testify: Ann-Marie

Price, Central Health; Maureen Milligan, Teaching Hospitals of Texas;

Joe Garcia, University Health System)

Against - None

BACKGROUND: Health and Safety Code, ch. 281 permits the creation of a countywide

hospital district for counties with at least 190,000 inhabitants to provide medical aid and hospital care for indigent and needy persons in the district. The board of hospital managers is the managing authority for the

hospital district.

Under Health and Safety Code, sec. 281.050 a hospital district's board of managers may, with the approval of the relevant commissioners court,

lease undeveloped real property for up to 50 years.

DIGEST: CSHB 2559 would expand the types of property that hospital districts

could lease and the types of leases into which hospital districts were allowed to enter. Hospital districts authorized under Health and Safety Code, ch. 281 could enter into a lease for the development, improvement, acquisition, or management of developed or undeveloped real property designed to generate revenue for the hospital district. The types of leases could include a lease with an option to purchase, an installment purchase agreement, an installment sale agreement, or any other type of agreement

related to the real property considered appropriate by the board.

The bill would allow the board of the Travis County hospital district to

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lease undeveloped or vacant real property for up to 99 years to develop and construct facilities designed to generate revenue for the financial benefit of the hospital district. The board's decision would have to be approved by the commissioners court at a meeting subject to applicable open meetings requirements. The board could directly or through a nonprofit corporation enter into a joint venture with public or private entity on the lease.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2015.

# SUPPORTERS SAY:

CSHB 2559 could help hospital districts bring in the revenue they need to fulfill their mission of providing medical care to the indigent by expanding the types of leases these districts can enter. The bill would not redirect the mission of hospital districts because any leases or agreements would need to be approved by the commissioners court, which would ensure that leasing decisions were tied to improving the hospital districts' ability to provide better medical care to the indigent. The bill also could lighten the tax burden on some taxpayers by encouraging hospital districts to seek alternative methods of revenue generation.

Currently, hospital districts cannot lease undeveloped real property for longer than 50 years. The provision allowing the Central Health hospital district of Travis County to enter a 99-year lease could help the district bring in the maximum potential revenue on real property it leases. A longer lease also would permit alternative financing and leasing actions such as a sales installment purchase.

# OPPONENTS SAY:

CSHB 2559 could distract hospital districts from their mission of providing care to indigent people. While loosening leasing restrictions could open up new sources of revenue, the state should be careful not to allow property management to become a bigger priority than care.

4/23/2015

HB 861 Dale, et al. (CSHB 861 by Herrero)

SUBJECT: Intent to commit online solicitation of a minor

COMMITTEE: Criminal Jurisprudence — committee substitute recommended

VOTE: 7 ayes — Herrero, Moody, Canales, Hunter, Leach, Shaheen, Simpson

0 nays

WITNESSES:

For — Joel Pridgeon, Austin Police Department; Jeff Lee, Harris County Constable Pct. 4; Alan Curry, Harris County District Attorney's Office; (Registered, but did not testify: Donald Baker, Austin Police Department; William Squires, Bexar County District Attorney's Office; Tim Anderson, National Center for Missing and Exploited Children; Rick Ramirez, City of Sugarland; Melinda Smith, Combined Law Enforcement Associations of Texas; Bruce Moats, Fort Bend County, Internet Crimes Against Children Task Force; Steve Dye, Grand Prairie Police Department; Gary Spurger, Harris County Constables Pct. 4; Jeff Pietsch, Harris County Sheriff's Office, ICAC; Mark Seals, David Nettles, Shannon Taylor, and James Huckabee, Houston Metro Internet Crimes Against Children Task Force; Jessica Anderson, Houston Police Department; Bill Elkin, Houston Police Retired Officers Association; Nancy Jones, HPD, ICAC; William Brewster and Sarah Wyatt, Internet Crimes Against Children Task Force; Cynthia Pulcher, Montgomery County District Attorney's Office; Martinez, Montgomery County Pct. 3 Constables Office; Cory Arnold, Montgomery County Pct. 4 Constables Office; Chris Kaiser, Texas Association Against Sexual Assault; Lon Craft, Heath Wester, Texas Municipal Police Association; Gary Tittle, Texas Police Chiefs Association; Susan Patten, Time Warner Cable; Warren Diepraam, Waller County District Attorney's Office; Jeffery Jones; Sprague)

Against — None

On — Brenda Cantu, Office of Attorney General

**BACKGROUND:** 

Penal Code, sec. 33.021 makes the online solicitation of a minor a criminal offense. Under sec. 33.021(b), it is a crime for someone 17 years of age or older to use the Internet, electronic mail, text messages, other

electronic message service or system, or a commercial online service to intentionally:

- communicate in a sexually explicit manner with a minor; or
- distribute sexually explicit material to a minor.

The offense must be done with the intent to arouse or gratify the sexual desire of any person.

Under Penal Code, sec. 33.021(c), individuals also commit the offense if they use the electronic means listed above to knowingly solicit a minor to meet, with the intent that the minor will engage in sexual contact, sexual intercourse, or deviate sexual intercourse. It is not a defense to prosecution under subsection (c) that that the meeting did not occur, the person did not intend for the meeting to occur, or that the actor was engaged in a fantasy at the time the offense was committed.

It is a defense to prosecution under both subsections (b) and (c) that at the time of the conduct, the person accused of soliciting the minor was married to the minor or was not more than three years older than the minor and the minor consented.

Under the offense, a minor is defined as someone who represents himself or herself to be younger than 17 years old or someone believed to be younger than 17 years old.

DIGEST:

CSHB 861 would revise the offense of on-line solicitation of a minor. The offense under Penal Code, sec. 33.021(b), relating to communicating with a minor or distributing sexually explicit material to a minor, would have to be committed with the intent to induce a minor to engage in conduct that would constitute certain crimes. It would have to be done with the intent to engage in the offenses of indecency with a child, sexual assault, aggravated sexual assault, sexual performance by a child, or possession or promotion of child pornography. The current defenses to prosecution that a person was married to a minor or was not more than three years older than the minor and the minor consented would no longer apply to sec. 33.021(b).

The bill would remove two circumstances from the list of those which currently cannot be defenses to prosecution under Penal Code, sec. 33.021(c): not intending for a meeting to occur and being engaged in a fantasy at the time of the offense.

The bill would take effect September 1, 2015, and would apply only to offenses committed on or after that date.

#### SUPPORTERS SAY:

CSHB 861 is needed to revise the state's law prohibiting the online solicitation of a minor to address a portion of the law found unconstitutional. In 2013, the Texas Court of Criminal Appeals found in Ex Parte Lo that sec. 33.021(b) of the Texas law was unconstitutionally overbroad because it prohibited constitutionally protected speech and was not narrowly drawn to achieve only the objective of protecting children from sexual abuse. CSHB 861 would revise the law to address the court's concerns and to ensure that Texas could continue to protect children from online sexual predators.

CSHB 861 would revise the online solicitation statute to address problems the Court of Criminal Appeals identified with the part of the offense involving communications with a minor. The bill would address the court's concern with the intent that is required to commit the offense by replacing current language with a requirement that a person must have the intent to induce a minor to engage in specified illegal sex crimes. This change would track language in the court opinion and would ensure that conduct that was not being targeted by the law or that was protected by the First Amendment would not fall under its provisions. The five crimes listed in the bill would cover the offenses that most often arise in these cases, some of which were listed in the court opinion. The offenses would be limited and listed in the statute so that the law would be narrowly tailored, as required by the court.

The bill also would narrow the current law by eliminating the listing of certain situations that are not permitted to be used as defenses to prosecution for the portion of the crime dealing with luring children to meetings. With this change, the law would be focused on those actually soliciting minors for meetings, not on those engaged in fantasies or fictional scenarios. Defendants would continue to be unable to raise the

fact that a meeting did not occur as a defense.

CSHB 861 would remove some redundancies and potential conflicts in the Penal Code by eliminating the applicability of existing defenses to prosecutions for the part of online solicitation that would be changed by the bill. Some of the specific offenses carry the same or similar defenses to prosecution, and CSHB 861 would ensure there is no conflict in these provisions.

CSHB 861 would not amend the current definition of a minor because the Texas Court of Criminal Appeals' 2013 decision did not suggest any changes were needed. Current law defining a minor is not overly broad and would not lead to the prosecution of two adults pretending to be children. Under CSHB 861, there would have to be intent to induce a minor to engage in a sexual offense, and two adults pretending to be children would be communicating about a consensual act, not a crime involving a minor. Law enforcement authorities would not pursue such cases.

OPPONENTS SAY:

CSHB 861 would not address problems with the current definition of a minor as it is defined for the online solicitation statute. By allowing the definition to include those who represent themselves to be younger than 17, the law could be overly broad and cover two adults pretending to be children. It would be best to limit the law to applying to those who are actually younger than 17 and those believed to be younger than 17.

OTHER OPPONENTS SAY: CSHB 861 could be expanded without becoming too broad by listing additional offenses that could lead to charges of online solicitation. For example, compelling prostitution, sex trafficking, and similar offenses could be added to give children additional protections.

NOTES:

The companion bill, SB 344 by Huffman, was passed by the Senate on April 9 on the local and uncontested calendar.

4/23/2015

Zerwas (CSHB 2244 by Kacal)

HB 2244

SUBJECT: Requiring TCEQ to adopt rules for medical waste management

COMMITTEE: Environmental Regulation — committee substitute recommended

VOTE: 8 ayes — Morrison, Isaac, Kacal, K. King, P. King, Lozano, Reynolds,

E. Thompson

1 nay — E. Rodriguez

WITNESSES: For — Jeff Kuglen, MedWaste Joint Venture; Al Burson and Richard

> Evans, Stericycle; (Registered, but did not testify: Lon Burnam, Public Citizen; Stephen Minick, Texas Association of Business; Charles Bailey,

Texas Hospital Association)

Against — Andrew Dobbs and Robin Schneider, Texas Campaign for the Environment; (Registered, but did not testify: Cyrus Reed, Lone Star

Chapter Sierra Club)

On — John Riley, Sharps Environmental; (Registered, but did not testify:

Earl Lott, Texas Commission on Environmental Quality)

**BACKGROUND:** The solid waste disposal act, under Health and Safety Code, ch. 361,

contains provisions governing the management of solid waste, including

hazardous waste, intended to protect public health and safety.

30 Texas Administrative Code (TAC), part 1, ch. 330, subch. Y governs medical waste management. Rules in this subchapter cover storage of medical waste, transporters of untreated medical waste, the transfer of

shipments of medical waste, and the treatment and disposal of medical

waste.

30 TAC, part 1, ch. 330, subch. M contains rules governing easements and

buffer zones for certain facilities, including facilities that process medical

waste.

DIGEST: CSHB 2244 would consolidate existing law governing the management of

medical waste from various sections in rule and statute governing all solid

waste management. The bill would direct the Texas Commission on Environmental Quality (TCEQ) to adopt rules as a new chapter in the Texas Administrative Code that specifically would regulate medical waste.

TCEQ would be responsible for regulating the handling, transportation, storage, and disposal of medical waste in the state. It would use permitting, registration, and other appropriate means to regulate these functions. The commission would have to consider water pollution control, water quality, air pollution control, and air quality as well as the protection of human health and safety.

Rules adopted to regulate municipal solid waste storage and processing units would apply in the same manner to medical waste only to the extent that they addressed:

- permit and registration requirements that could be applied to a facility that handled medical waste;
- minor modifications to permits and registrations, including changes in operating hours and buffer zones; and
- numerous other requirements and conditions related to the management and storage of waste and associated issues.

The bill also would require entities that sent medical waste, including sharps, to a solid waste landfill to include a statement about the methods used to treat the contents of the shipment and how these complied with the applicable administrative rules.

For facilities that handled medical waste processing or storage, the bill would stipulate that the commission could not require a minimum distance greater than 25 feet between the processing equipment or storage area and the facility's boundary. This provision would not apply to a storage unit as long as waste contained in transport vehicles for more than 72 hours was refrigerated below 45 degrees. TCEQ could consider alternatives to these buffer zone requirements for permitted, registered, or otherwise authorized waste processing and storage facilities.

TCEQ would have to adopt rules by June 1, 2016, to implement the bill's

provisions. The new rules would have to minimize the effect on other rules regulating municipal solid waste facilities. An existing facility that had a permit, registration, pending permit application, or other authorization to handle medical waste would not be required to comply with HB 2244 until the new rules took effect.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2015. Any change to a permit or other authorization in effect on that date that was necessary to implement the provisions of HB 2244 would be authorized without notice and comment and could not be contested.

# SUPPORTERS SAY:

CSHB 2244 would protect public health and would make the rules that govern medical waste management and disposal easier to find, understand, and follow.

The bill would make the regulation process more efficient by clarifying which rules actually applied to medical waste disposal facilities. In the past, operators applying for or renewing permits sometimes had to go through a time-consuming process with the Texas Commission on Environmental Quality (TCEQ) to sort out which rules actually applied. Simplifying processes for medical waste management facilities would be cost effective, and the savings could be passed on to hospitals and others who must dispose of medical waste.

Landfills naturally require a substantial buffer zone because they hold loose material that can blow around, release odors, and be unsightly. By contrast, medical waste management activities typically are performed in an enclosed building, such as a warehouse, or in trucks. Therefore, a large buffer zone is not needed, which is reflected in the bill. TCEQ frequently has granted exceptions to existing rules to approve less than a 50-foot buffer for medical waste facilities.

Incinerators are used in very few medical waste facilities in Texas, but these must be permitted under a separate process and still would be subject to all the same regulations as before the effective date to protect health and safety. Codification of a 25-foot buffer zone for medical waste management facilities in general would not change the applicability of

additional health and safety measures already required of a facility using an incinerator.

OPPONENTS SAY:

CSHB 2244 would create buffer zones between medical waste disposal sites and other types of structures that are not wide enough to ensure public safety. This would be of particular concern if incinerators were operating on site because they create a public health hazard from the smoke and particulates they release into the air. Even if facilities using incinerators had to get additional permits, a 25-foot-buffer zone simply would not provide the appropriate space between these facilities and other structures, such as homes, businesses, and community buildings. Current rules already provide the necessary guidance for medical waste management.

González (CSHB 66 by Aycock)

HB 66

SUBJECT: Exempting recent immigrant students from accountability requirements

COMMITTEE: Public Education — committee substitute recommended

VOTE: 10 ayes — Aycock, Allen, Bohac, Deshotel, Farney, Galindo, González,

Huberty, K. King, VanDeaver

0 nays

1 absent — Dutton

WITNESSES:

For — Rogelio Guzman, Del Valle ISD; Sheila Guzman, Elgin ISD; Jesse Romero, Texas Association for Bilingual Education (TABE); Ruth Vail; (Registered, but did not testify: David Anderson, Arlington ISD Board of Trustees; Traci Berry, Goodwill Central Texas; Ted Melina Raab, Texas AFT (American Federation of Teachers); Barry Haenisch, Texas Association of Community Schools; Lori Henning, Texas Association of Goodwills; Amy Beneski, Texas Association of School Administrators; Grover Campbell, Texas Association of School Boards; Lindsay Gustafson, Texas Classroom Teachers Association; Kirsten Hund, Texas Elementary Principals and Supervisors Association (TEPSA); Ellen Arnold, Texas PTA; Colby Nichols, Texas Rural Education Association; Maria Whitsett, Texas School Alliance; Portia Bosse, Texas State Teachers Association; William Exter, The Association of Texas Professional Educators; and Julie Cowan)

Against — David Hinojosa, MALDEF

On — Nelson Salinas, Texas Association of Business; Von Byer, Texas Education Agency

**BACKGROUND:** 

Student scores on the State of Texas Assessments of Academic Readiness (STAAR) are considered in rating schools and campuses under the state accountability system. Education Code, sec. 39.054 directs the education commissioner to adopt rules to evaluate districts using letter grades to reflect acceptable or unacceptable performance. Campuses are to be assigned ratings of exemplary, recognized, acceptable, or unacceptable.

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Education Code, sec. 39.027 allows a student of limited English proficiency to be exempted from the administration of STAAR exams for a period of up to one year after initial enrollment in a school in the United States and for additional years for certain unschooled immigrants, asylees or refugees.

Spanish language versions of STAAR exams are available for students in grades 3 through 5. Linguistically accommodated English versions of STAAR are available for grades 3-8 and certain high school end-of-course exams.

DIGEST:

CSHB 66 would prohibit the commissioner of education from lowering a district or campus performance rating based on the unsatisfactory performance on a STAAR exam by a student of limited English proficiency for a period of up to two years after the student's initial enrollment in a school in the United States.

The prohibition would not apply to a performance rating for purposes of compliance monitoring by the Texas Education Agency (TEA) or public school accountability under federal law. It also would not apply if the assessment instrument administered was in the student's native language.

The STAAR scores of students with limited English proficiency would be required to be included in annual campus report cards prepared by TEA and distributed to districts.

The bill would take effect September 1, 2015 and would apply to a student regardless of the date the students initially enrolled in a school in the United States.

SUPPORTERS SAY:

CSHB 66 would ensure that districts and campuses were not unfairly penalized while working to educate students who are still learning the English language. Texas schools, especially those along the border with Mexico, are experiencing an influx of students who are English language learners. Some of these students are high school age but have not been in a classroom since elementary school. Although current law exempts such students from STAAR exams during their first year in a U.S. school, after

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that the exam results may be factored into campus and district accountability ratings.

It can take newly immigrated students up to five years to achieve oral proficiency in English and up to seven years to achieve academic proficiency. These students may be from many different countries and speak many different languages. CSHB 66 would give these students two years before their performance on standardized tests could be used to evaluate the schools they attend for state accountability purposes. This two-year window would give schools time to help newly arrived immigrant students build English proficiency, master academic content, and prepare for state assessments. At that point, their STAAR scores would be a better reflection of their true academic ability.

Test scores for English language learners would be reported on campus report cards during the two-year period they were exempted from the accountability system. This could alleviate concerns that schools would ignore recent immigrant students if they were not being held accountable for their STAAR scores.

# OPPONENTS SAY:

CSHB 66 would create an unwelcome disconnect between the accountability system and student testing. School districts and campuses would get a pass while immigrant students would continue to be impacted by the high stakes attached to STAAR exams. For example, students in grades 5 and 8 still would be required to pass STAAR tests as a condition of being promoted automatically to the next grade.

The accountability system serves as a strong impetus to ensure that schools do their best to educate all students. If schools do not feel the pressure to help immigrant students succeed, there could be negative consequences for both students and the state.

HB 750 Frullo, et al. (CSHB 750 by Sheets)

SUBJECT: Limiting landowner liability for aviation activities on owner's land

COMMITTEE: Judiciary and Civil Jurisprudence — committee substitute recommended

VOTE: 8 ayes — Smithee, Farrar, Clardy, Laubenberg, Raymond, Schofield,

Sheets, S. Thompson

0 nays

1 absent — Hernandez

WITNESSES: For — Yasmina Platt, Aircraft Owners and Pilots Association; Chase

Snodgrass, Presidio County; Robb Van Eman and Dana Martin,

Spicewood Pilots Association; Mike Hull, Texans for Lawsuit Reform;

Stephen Goebel; Clay Slack; (Registered, but did not testify: Jason

Skaggs, Texas and Southwestern Cattle Raisers Association)

Against — Bryan Blevins, Jr. and Michael Slack, Texas Trial Lawyers

Association

BACKGROUND: Under Civil Practice and Remedies Code, ch. 75, non-government

landowners are not liable for any injury to a person they allow on or invite

onto their property for recreation except in cases of gross negligence,

malicious intent or bad faith. Landowners also do not assume

responsibility or incur liability for injury to any individual or property

caused by a person allowed or invited onto the property.

Under common law, a landowner owes a duty to protect a person they

allow on or invite onto their property (for non-recreation reasons) from conditions that pose an unreasonable risk of harm that the landowner

knows or should know about by either warning the person or making the

conditions reasonably safe.

DIGEST: CSHB 750 would define "recreational aviation activities" to mean the

recreational operation or use of an airplane or other aircraft, including the

taxiing, handling, taking off, parking, flying, or landing of the airplane or

other aircraft.

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The bill also would include in the list of activities under the definition of "recreation" in Civil Practice and Remedies Code, sec. 75.001 "recreational aviation activities occurring on or above land." This definition would specify that:

- the owner, lessee, or occupant of the land in question was not a governmental unit;
- the land was not held open to the public for recreational aviation activities; and
- the owner, lessee, or occupant of the land did not charge for the use of the land.

This bill would take effect September 1, 2015, and would apply to a cause of action that accrued on or after that date.

## SUPPORTERS SAY:

CSHB 750 would give landowners the ability to allow the use of their airstrips without fear of liability. Currently, there are about 1,600 registered private airstrips across the state, along with numerous other "back country" airstrips. Pilots who request use of these airstrips are frequently turned down because landowners fear tort liability.

These airstrips tend to be in some of the most beautiful regions of the state, such as Big Bend National Park, so enabling landowners to open their airstrips could bring significant tourism revenue and general aviation jobs to the state. Most states in the western United States already have this type of provision, and this bill would help Texas compete with those states for tourism dollars.

This bill simply would shift the responsibility for any incidents that occurred during these activities to the pilots. Around 90 percent of pilots are insured for this type of activity, and they are the party best equipped to manage the risks involved.

As a practical matter, pilots have the ability to determine whether an airstrip is safe to land on. When landing, pilots fly over the strip at about 100 feet to inspect it and ensure that they can make a safe landing. If they see anything that could pose a risk, they fly over again at a lower altitude

#### HB 750 House Research Organization page 3

to get a closer look before deciding whether to land on the strip. Because pilots are both insured and trained to manage the risks involved in using a private airstrip, any potential tort liability should rest on their shoulders.

Although pilots could add landowners to their insurance policies, it is an onerous process. This bill would provide a simpler solution for ensuring that pilots were able to enjoy flying as intended by the recreational use statute.

OPPONENTS SAY:

This bill could create a risk of uncompensated loss for injuries resulting from an inherently dangerous activity. There are cases of accidents that have occurred due to the exclusive negligence of airstrip owners. It can arise out of on-the-ground activity such as tying down aircraft, refueling, and maintenance of the airstrip. If a landowner improperly set a wrench next to a jet engine, put the wrong kind of fuel in a plane, or failed to tie a plane down properly, any loss that resulted from the landowner's negligence would be largely uncompensated under the bill.

Civil Practice and Remedies Code, ch. 33 establishes a system of proportionate responsibility under which a defendant is only required to pay a claimant for the percentage of damages equal to the defendant's percentage of responsibility. Under CSHB 750, if a claimant filed a suit against a pilot, the landowner could be brought in as a responsible third party. The immunity granted by the bill could immunize the landowner and any responsibility apportioned to the landowner go uncompensated.

The recreational use statute does not limit liability in cases of gross negligence, malicious intent, or bad faith, but these have been almost impossible to prove in aviation cases. A better solution could be for pilots to add owners of landing strips as additional insured on their insurance policies. This is available for a modest fee or at no cost and would protect landowners from liability without the possibility of uncompensated loss for anyone injured as a result of the landowner's negligence. The landowners themselves also could insure their airstrips against the potential for injury.

Compared to other activities covered by the recreational use statute, the potential for loss in aviation activities is high. The planes themselves are

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expensive and could incur damages and diminution of value if improperly handled by landowners. Aviation accidents generally do not result in minor injuries but carry risks of serious injury and death. Although air travel is generally considered safe, there is a significant difference between large commercial airports and small privately owned airstrips. Large commercial airports have the benefit of control towers, weather reporting, air traffic controllers, and other safety measures. Private airstrips rarely have these, and the risk of injuries at one of these strips is greater. The incentive should be for landowners to be as careful as possible in the maintenance and operation of their airstrips.

OTHER
OPPONENTS
SAY:

Although the goal of this bill would be to provide immunity for recreational activity on private land, it could be broadly construed to include immunity for commercial activities. Many businesses own private airstrips and the bill might allow them to sidestep potential liability for those airstrips. It would restrict immunity to cases in which the landowner did not charge for the use of the airstrip, but the landowner could charge for associated activities, such as a restaurant, hotel, or golf course. Those businesses could profit from the airstrip and avoid liability for its operation. A more narrowly tailored bill could ensure that it provided immunity only when there was no profit-generating activity associated with use of the airstrip.

Numerous public airstrips operate without profit to facilitate recreational aviation. These airstrips adhere to strict Federal Aviation Administration safety requirements and should be granted the same protections as those airstrips that are closed to the public but grant select pilots use of their facilities. The rest of the recreational use statute protects landowners who open their land to the public for recreational use.

HB 786 Walle, et al.

SUBJECT: Creating right for public employees to express breast milk at workplace

COMMITTEE: Business and Industry — favorable, without amendment

VOTE: 7 ayes — Oliveira, Simmons, Collier, Fletcher, Rinaldi, Romero, Villalba

0 nays

WITNESSES:

For — Barbara Wilson-Clay, Healthy Mothers Healthy Babies of Central Texas; Alice Bufkin, Texans Care for Children; Paige Williams, Texas Classroom Teachers Association; Carisa Lopez, Texas State Employees Union; Sarah Kuttesch; Anna Smith; (Registered, but did not testify: Kate Kuhlmann, Association of Texas Professional Educators; Janet Jones, Central Texas Breastfeeding Coalition; Lindsay Lanagan, City of Houston; Shannon Lucas, March of Dimes; Rick Levy, Texas AFL-CIO; Ted Melina Raab, Texas American Federation of Teachers; Krisdee Donmoyer, Texas Breastfeeding Coalition, Central Texas Breastfeeding Coalition; Michelle Romero, Texas Medical Association; Michael Cunningham, Texas State Building and Construction Trades Council; Harrison Hiner, Texas State Employees Union; Casey Smith, United Ways of Texas; Maxie Gallardo, Workers Defense Project; Neesha Davé; Adam Donmoyer; Glenn Scott; Gordon Waggett)

Against — None

On — (Registered, but did not testify: Tammy Sajak, Texas Department of State Health Services)

**BACKGROUND:** 

The federal Fair Labor Standards Act (FLSA) was amended in 2010 to require employers with 50 or more employees to provide a reasonable break time for employees to express breast milk for a year after the child's birth. The employer must provide a place, other than a bathroom, that is shielded from view and free of intrusion. These provisions only apply to hourly employees, not employees who are exempt from FLSA.

DIGEST:

HB 786 would create a right for public employees to express breast milk in the workplace and require public employers to make certain

## HB 786 House Research Organization page 2

accommodations for those employees.

Under the bill, "public employer" would mean a county, municipality, or another political subdivision of Texas, including a school district, or a board, commission, office, department, or another agency in the executive, judicial, or legislative branch of state government, including an institution of higher education.

The public employer would be required to provide a reasonable amount of break time for an employee to express breast milk each time the employee needed to and provide a place for the employee to express breast milk, other than a bathroom, that would be shielded from view and free from intrusion from other employees and the public. The public employer would be required to write a policy stating that the employer supported the practice of expressing breast milk and that it would make reasonable accommodations for the needs of employees who expressed breast milk.

The bill would prohibit a public employer from discriminating against, or suspending or terminating the employment of an employee because the employee asserted her right to express breast milk in the workplace.

The bill would take effect on September 1, 2015.

SUPPORTERS SAY:

HB 786 would increase health benefits for nursing mothers at work and their children, while conferring economic benefits to the public employer. Many scientific studies have shown health benefits of breastfeeding for both the child and mother. A new mother returning to work should be able to pass on these health benefits to her child. To do this, she must continue to pump breast milk regularly throughout the day to prevent her body from stopping milk production, but many public employees are not able to take a break for this purpose because they lack a replacement to temporarily cover their job duties. The bill would ensure that the public employee could express breast milk at any time she needed to do so.

The bill also would ensure that public employees had a place to express breast milk. For many, the bathroom is the only available space at their workplace for this purpose. Bathrooms often lack the necessary electrical outlets for breast pumps or may not be sufficiently sanitary. These

#### HB 786 House Research Organization page 3

conditions and the difficulties associated with taking a break to express breast milk force many employees to choose between their jobs and continuing to breastfeed their children. This is not fair to the employee or child.

HB 786 would benefit public employers economically. More employees would return to work and stay at their jobs after giving birth if they had support from employers. Public employers would not have to hire or train new employees as often because the turnover would be lower, resulting in economic savings. This ultimately would negate upfront costs for accommodating this common sense measure.

The bill would guarantee public employees the same right to express breast milk granted to hourly employees by the Fair Labor Standards Act. According to the Texas Municipal League, the cost to municipalities would not be significant, and the Texas Association of Counties reported that many counties have implemented policies in line with this bill. Many other public employers also already have made accommodations for their employees because of similar requirements under federal law.

OPPONENTS SAY:

HB 786 could burden some public employers that might have difficulty providing the accommodations required by the bill, particularly those with fewer workers and limited workspace. For some public employers who did not already have such accommodations, this requirement could require some cost to provide the required space. Other public employers, including school districts, might not have sufficient staff to temporarily cover the duties of women taking breaks to express breast milk at unpredictable times during the workday. The bill would not provide funding to help cover any of these costs, which could be significant for some employers.

Bohac (CSHB 1388 by Phillips)

HB 1388

SUBJECT: Requiring proof for denying firefighter, EMT workplace injury claims

COMMITTEE: Homeland Security and Public Safety — committee substitute

recommended

VOTE: 7 ayes — Phillips, Burns, Dale, Metcalf, Moody, M. White, Wray

0 nays

2 absent — Nevárez, Johnson

WITNESSES: For — Rafael Torres, Texas State Association of Fire Fighters;

(Registered, but did not testify: David Crow, Arlington Professional Fire

Fighters; Mike Martinez and Randy Moreno, Austin Firefighters

Association; Chris Jones, Combined Law Enforcement Associations of Texas; John Riddle, Conroe Professional Fire Fighters; Johnny Villarreal, Houston Professional Fire Fighters Local 341; Sean Dailey, Houston

Professional Firefighters Association; Glenn Trubee, Lake Travis

Firefighters Association IAFF Local 4117; Aidan Alvarado, Laredo Fire Fighters Association; Glenn Deshields, Texas State Association of Fire

Fighters; Wayne Delanghe; Katherine McAnally)

Against — David Reagan, Texas Municipal League Intergovernmental Risk Pool; (*Registered, but did not testify*: Paul Sugg, Texas Association of Counties Risk Management Pool; Laura Mueller, Texas Municipal League)

On — (*Registered, but did not testify*: Brent Hatch and Amy Lee, Texas Department of Insurance)

BACKGROUND:

Government Code, ch. 607, subch. B creates a presumption that certain diseases and illnesses of firefighters and emergency medical technicians (EMTs) are workplace injuries and are covered under benefits and workers' compensation systems. This presumption only applies for a firefighter or EMT who has been employed for more than five years and discovers the illness during their employment.

Current law allows the presumption to be rebutted if a preponderance of

## HB 1388 House Research Organization page 2

evidence shows that a factor other than their employment as a firefighter or EMT caused the illness or injury.

DIGEST:

CSHB 1388 would adjust the conditions under which a firefighter or EMT who suffered a heart attack or stroke resulting in disability or death was presumed to have suffered it during the course and scope of employment for the purpose of receiving compensation or benefits. Language specifying that the incident have occurred while the EMT or firefighter was on duty and engaged in nonroutine stressful or strenuous physical activity or training would be removed. The bill would require that the firefighter or EMT have been on duty at the time of the heart attack or stroke for the incident to be presumed to have occurred during the course and scope of employment.

The bill also would require that a rebuttal of the presumption of workplace injury include a statement by the person issuing the rebuttal that described the evidence reviewed to determine that the cause of the illness or injury was not related to the firefighter or EMT's employment.

The bill would add a requirement that insurance carriers who refused to pay benefits under the Texas Workers' Compensation Act (Labor Code, ch. 409) in response to a claim for a presumed workplace injury include notice of the evidence the carrier reviewed to make the determination.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2015, and would apply only to a claim brought on or after that date.

SUPPORTERS SAY:

CSHB 1388 would help ensure the fair treatment of firefighters and EMTs who sustained workplace injuries and illnesses and were seeking workers' compensation and other benefits. Political subdivisions or insurance carriers currently can deny applications for benefits without first providing substantive evidence on the reasons for the denial. Firefighters and EMTs must dispute this denial to access their benefits, which is a costly and time-consuming process and may take place while they are still injured or ill. Requiring carriers and employers to provide an explanation with an initial denial would prevent the workers' compensation system from

## HB 1388 House Research Organization page 3

forcing an appeal and dragging out the process.

This bill would prevent the denial of applications from being used as a bureaucratic tactic to delay benefits and force individuals to use their private health insurance to cover illnesses or injuries sustained in the line of duty. After an individual uses private insurance, it is difficult to rejoin the workers' compensation system to get workplace injuries covered. This practice is an inappropriate use of resources.

The bill also would ensure that firefighters and EMTs were covered for heart attacks or strokes that occurred while they were on duty and remove the burden placed on those individuals of having to prove the work that caused the injury was above and beyond the already stressful job these individuals have.

OPPONENTS SAY:

CSHB 1388 would add unnecessary provisions that would require the political subdivision or insurance carrier to provide substantive evidence on the reasons for the denial of an application for benefits or workers' compensation. These bodies already are required to provide reasons for denial of a workers' compensation claim.

The bill could require political subdivisions to provide benefits and workers' compensation for heart attacks and strokes that occurred outside the scope of a firefighter's or EMT's employment by presuming it was a workplace injury if the individual was on duty. The presumption provision in current law appropriately requires heart attacks or strokes that occur while on duty to be tied to an individual's work. The bill would expand the conditions for eligible injuries or illnesses beyond the intention of the law and beyond what the workers' compensation program is intended to cover.

Under the bill, taxpayers would bear the burden of paying for benefits via workers' compensation for injuries that might not be actual workplace injuries. Most cities and counties do not purchase workers' compensation from private insurance companies, so the cities and counties would directly pay for the benefits, not an insurance company.

NOTES: The Senate companion bill, SB 1768 by Creighton, was referred to the

## HB 1388 House Research Organization page 4

Senate State Affairs Committee on March 24.

The author intends to offer a floor amendment that would remove section 1 of the bill, leaving current law in place regarding certain conditions under which a heart attack and stroke were presumed to have occurred during the course and scope of employment. The amendment also would change section 3 to specify that an insurance carrier's notice of refusal to pay benefits would have to describe the reason the presumption claimed to be applicable under Government Code, ch. 607, subch. B did not apply and the evidence that the person reviewed before making the determination.

HB 1881 Capriglione, et al.

SUBJECT: Allowing private schools to add fees to credit and debit card transactions

COMMITTEE: Investments and Financial Services — favorable, without amendment

VOTE: 6 ayes — Parker, Longoria, Capriglione, Flynn, Landgraf, Stephenson

0 nays

1 absent — Pickett

WITNESSES: For — Lucy Thomas, Angelo Catholic School; Jim Waits, FACTS

Management Co.; Laura Steinbach, Rawson Saunders School; Ted Smith, St. Austin Catholic School-School Advisory Board; Margaret McGettrick, TEPSAC; Laura Colangelo, Texas Private Schools Association; Melinda Young; (*Registered, but did not testify*: Raney Payne, Legacy Christian Academy; Jeff Patterson and Jennifer Allmon, Texas Catholic Conference

of Bishops; Steve Blanchard)

Against — None

BACKGROUND: Finance Code, sec. 59.402 prohibits merchants from imposing a surcharge

on purchases made with a debit or stored-value card, and sec. 339.001 prohibits merchants from imposing a surcharge on purchases made with a

credit card.

DIGEST: HB 1881 would allow a private school to charge a fee or other amount in

connection with a payment for tuition or other school costs made by credit card, debit card, or electronic funds transfer submitted in person, by mail, over the telephone, or through the Internet. The fee or other amount could be charged in addition to the tuition or other school costs in an amount reasonable and necessary to reimburse the school for the expense of

processing and handling the payment or transaction.

The bill would allow the private school to charge a fee or other amount as a discount or convenience charge for the transaction, or as a service charge in connection with a dishonored payment for a transaction paid by

credit card, debit card, or electronic funds transfer.

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The school would be required to notify the cardholder or other payer of any fee to be charged before accepting payment.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2015.

**SUPPORTERS** SAY:

By authorizing private schools to impose surcharges on debit and credit card transactions, HB 1881 would allow more schools to accept these forms of payments, which would provide more flexibility for parents of students. Without the authority to assess these fees on tuition and other charges, many private schools choose not to accept payments using debit or credit cards to avoid transaction fees from banks and other institutions.

Many private schools prefer for parents to pay with a debit or credit card for convenience, and some provide discounts for parents who pay in full at the beginning of the semester, which is easier for some parents to do if paying by credit card. Being able to receive a tuition payment in full decreases the risk that tuition will go unpaid and allows schools to better predict their budgets for the year. However, the fees that credit card providers charge for debit and credit card transactions can have a significant impact on private schools' budgets, which already can be tight. Even small private schools can accrue thousands of dollars in fees over a semester. This has forced many private schools to stop offering the option to pay by credit or debit card.

Sending a child to private school may be one of the biggest financial choices a parent can make. Many parents like the flexibility of charging the tuition in full to a credit card and paying off the balance in more manageable installments. Others prefer to pay through a credit card to accrue benefits. HB 1881 would help increase the options for parents of students by encouraging private schools to accept credit and debit card payments.

**OPPONENTS** SAY:

No apparent opposition.

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NOTES:

The Senate companion bill, SB 1596 by Creighton, was reported favorably from the Senate Business and Commerce Committee, placed on the intent calendar on April 20, and not again placed on the intent calendar on April 23.

HB 3291 Raymond (CSHB 3291 by P. King)

SUBJECT: Increasing criminal penalties for thefts relating to oil and gas operations

COMMITTEE: Energy Resources — committee substitute recommended

VOTE: 9 ayes — Darby, Canales, Craddick, Dale, Keffer, P. King, Landgraf,

Meyer, Riddle

1 nay — Wu

3 absent — Paddie, Anchia, Herrero

WITNESSES: For — Clete Buckaloo, Anadarko Petroleum; Robert Ream, Energy

Security Council; Mike Peters, Lewis Energy Group; Rene Pena;

(Registered, but did not testify: Adrian Acevedo, Anadarko Petroleum Corp.; Dan Hinkle, Association of Energy Service Companies, EOG

Resources; Paula Barnett, BP America; June Deadrick, CenterPoint

Energy; Steve Perry, Chevron USA; Tom Sellers, ConocoPhillips; Teddy

Carter, Devon Energy; Chris Hosek, Linn Energy, SM Energy; Hugo Gutierrez, Marathon Oil Corporation; Mark Gipson, Pioneer Natural Resources; Kinnan Golemon, Shell Oil Company; Jay Brown, Talisman

Energy; Gloria Leal, Texas Alliance of Energy Producers; Stephanie Simpson, Texas Association of Manufacturers; Lindsey Miller, Texas Independent Producers and Royalty Owners Association; Mari Ruckel, Texas Oil and Gas Association; Tricia Davis, Texas Royalty Council;

Greg Macksood)

Against — None

On — Forrest Mitchell, Office of Attorney General

BACKGROUND: Under Natural Resources Code, sec. 85.389, an unauthorized person who

knowingly destroys, breaks, removes, or otherwise tampers with oil and gas equipment commits a third-degree felony (two to 10 years in prison

and an optional fine of up to \$10,000).

DIGEST: CSHB 3291 would increase the penalty for tampering with oil and gas

equipment from a third-degree felony (two to 10 years in prison and an

## HB 3291 House Research Organization page 2

optional fine of up to \$10,000) to a second-degree felony (two to 20 years in prison and an optional fine of up to \$10,000). Additionally, the bill would make purchasing or selling oil, gas, or condensate without the applicable tender or permit from the Railroad Commission relating to oil or gas a second-degree felony.

This bill also would amend Penal Code, sec. 31.03 to make theft of oil, gas, condensate, or oil and gas equipment a second-degree felony if the value of the property stolen was worth between \$10,000 and \$200,000.

If the actor who committed this offense was employed by or in a contractual relationship with the owner of the stolen property and the actor used his employment or position in the contractual relationship in the commission of the offense, the bill would make the offense a first-degree felony (life in prison or a sentence of five to 99 years and an optional fine of up to \$10,000).

This bill would take effect September 1, 2015, and would apply only to an offense committed on or after its effective date.

## SUPPORTERS SAY:

CSHB 3291 would increase public safety and economic security and would serve as a valuable tool for prosecutors to break down criminal enterprises. The state currently loses billions of dollars every year in economic activity due to oil and gas theft operations, costing the state tens of millions of dollars in severance tax revenue annually.

This bill would increase enforcement effectiveness. Because of the stronger punishments available, prosecutors could bargain more effectively with defendants to get them to reveal information about larger criminal enterprises to which they may belong. This would allow law enforcement to more effectively target organized crime.

Theft operations of oil and gas have serious public safety impacts. Because they are illegal, theft operations in oil and gas storage facilities have little or no regard for safety, which can cause leaks that endanger both landowners and the general public. Criminal penalties should reflect this additional broader risk to public safety.

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Although the penalties for some offenses would be strong, they would not be excessive or disproportional because these crimes threaten public safety. Moreover, prosecutors have discretion in requesting punishment based on the situation and surrounding circumstances if, for instance, the actor was a first-time offender.

The primary way oil and gas is stolen is by vacuum trucks, which are designed to remove water that collects at the bottom of oil storage tanks. The truck operators collect oil along with the water, selling the oil to the "oil launderers," who transfer the oil to legitimate companies called "gatherers." The bill would make selling oil or gas without a permit a second-degree felony, which would further discourage the sale of stolen oil and gas.

Increasing criminal penalties would provide a strong disincentive to criminal operations, which often rely on employees or contractors of oil and gas operators to facilitate theft. This bill would minimize economic damage, increase severance tax revenue by reducing the amount of oil that was sold illegally, and provide prosecutors with the tools they need to take down criminal enterprises.

OPPONENTS SAY:

CSHB 3291 would not effectively decrease the crime rate. The best way to deter criminal enterprises is to increase enforcement of the law, but this bill only would increase punishment when the law was enforced. Criminal enterprises would not necessarily be deterred by increased punishment if the risk of being caught was not high enough.

Additionally, this bill would create a special category of offenses, applying extra penalties only to thefts relating to oil and gas operations. One industry should not receive special consideration when determining criminal penalties.

Finally, this bill could result in excessive and disproportionate punishment for first-time offenders. A person could be sentenced as a first-degree felon, even as a first-time offender, for stealing more than \$10,000 worth of property from an oil and gas company that employed the offender. While this offense certainly should be punished, it should not be classified as a first-degree felony, which is also applied to violent crimes such as

## HB 3291 House Research Organization page 4

aggravated assault and murder.

NOTES:

The Senate companion bill, SB 1393 by Zaffirini, was referred to the Senate Committee on Natural Resources and Economic Development on March 18.

HB 1107 **Phillips** 4/23/2015

SUBJECT: Creating penalties for operating with unsatisfactory motor carrier ratings

COMMITTEE: Transportation — favorable, without amendment

VOTE: 9 ayes — Pickett, Martinez, Y. Davis, Harless, Israel, Murr, Paddie,

Phillips, Simmons

0 nays

3 absent — Burkett, Fletcher, McClendon

WITNESSES: For — (Registered, but did not testify: Robert Turner, Earthmoving

Contractors Association of Texas; Les Findeisen, Texas Trucking

Association)

Against — None

On — Steven Rundell, Texas Department of Public Safety

**BACKGROUND:** Transportation Code, sec. 644.151 provides penalties for commercial

> motor vehicle carriers that do not permit inspections of their premises under Transportation Code, sec. 644.104. A person who does not permit an inspection of the premises by state officers or local police commits a

class C misdemeanor (maximum fine of \$500).

Federal safety rules for motor carriers are outlined in 49 CFR, sec. 385.13.

These rules describe conditions and penalties for carriers with

unsatisfactory ratings.

DIGEST: HB 1107 would make it a class A misdemeanor (up to one year in jail

> and/or a maximum fine of \$4,000) for a commercial motor carrier to operate vehicles if the carrier had an unsatisfactory rating under federal safety rules (49 CFR, sec. 385.13). A person who knowingly operated, owned, leased, or assigned a person to operate a commercial motor vehicle in violation of the safety rules also would commit a class A

misdemeanor.

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Under the bill, if a vehicle that was out of compliance was involved in a crash that resulted in bodily injury, the offense would be a state-jail felony (180 days to two years in a state jail and an optional fine of up to \$10,000). If such a crash resulted in the death of a person, the offense would be a second-degree felony (two to 20 years in prison and an optional fine of up to \$10,000).

The bill would take effect September 1, 2015, and would apply only to an offense committed on or after that date.

## SUPPORTERS SAY:

HB 1107 would make Texas roadways safer by punishing bad actors that operate unsatisfactory buses and trucks on Texas roadways.

In 2008, a bus crash in Sherman, Texas, killed 17 members of a church group. The bus was operated by a company that had received an unsatisfactory rating by the Federal Motor Carrier Safety Administration (FMCSA) and had been taken out of service. If there had been greater state oversight and penalties, these lives could have been saved.

The bill would send a message to bad actors that Texas does not tolerate skirting federal safety standards. Operators are given an order for corrective action before being assigned an unsatisfactory rating. Operators then are informed in person that the FMCSA has shut them down. Because of this procedure, operators will know that they are out of compliance. The bill would provide further penalties to those who knowingly operated dangerously.

Federal law provides only administrative penalties for carriers operating with an unsatisfactory rating. These state criminal penalties would go much further in deterring rogue carriers from operating.

# OPPONENTS SAY:

HB 1107 would create an unnecessary crime. Individuals who knowingly operate a dangerous vehicle and hurt someone already can be prosecuted. The bill simply would add to the federal penalties prohibiting these carriers from operating.

HB 1947 Meyer

SUBJECT: Aligning license expiration dates for insurance agents and adjusters.

COMMITTEE: Insurance — favorable, without amendment

VOTE: 9 ayes — Frullo, Muñoz, G. Bonnen, Guerra, Meyer, Paul, Sheets, Vo,

Workman

0 nays

WITNESSES: For — Jason Talley, NAIFA Texas; (Registered, but did not testify:

Thomas Ratliff, American Insurance Association; Lee Loftis, Independent Insurance Agent of Texas; Paul Martin, National Association of Mutual Insurance Companies; Joe Woods, Property Casualty Insurers Association of America; Jay Thompson, Prudential, TALHI, Afact; Lee Manross, Texas Association of Health Underwriters; Jennifer Cawley, Texas Association of Life and Health Insurers; Beaman Floyd, Texas Coalition for Affordable Insurance Solutions; Greg Hooser, Texas Surplus Lines

Association; Robert (Bo) Gilbert, USAA)

Against — None

On — (Registered, but did not testify: Jamie Walker, Texas Department of

Insurance)

BACKGROUND: Insurance Code, ch. 4001 governs agent licensing in general. Sec.

4001.003 defines a "person" to mean an individual, partnership,

corporation, or depository institution.

Insurance Code, ch. 4102 governs public insurance adjusters. Sec. 4102.001 defines a "person" to include an individual, firm, company, association, organization, partnership, limited liability company, or

corporation.

Insurance Code, ch. 4003 governs insurance license expiration and renewal, and Insurance Code, ch. 981 governs surplus lines insurance.

DIGEST: HB 1947 would require licenses issued by the Texas Department of

#### HB 1947 House Research Organization page 2

Insurance (TDI) for insurance agents, surplus lines insurance agents, and insurance adjusters to use the same expiration schedule.

**Expiration dates.** Under the bill, a license issued by TDI and not suspended or revoked by the TDI commissioner would expire on the second anniversary of the date the license was issued to or renewed by a person that was not an individual.

For individual license holders, the bill would set licenses to expire on the holder's birthday. Licenses issued or renewed in an even-numbered year would expire on the license holder's birthday each even-numbered year. Licenses issued or renewed in an odd-numbered year would expire on the license holder's birthday each odd-numbered year. If a person held more than one license, all licenses would expire on the earliest expiration date of the licenses held. Thereafter, all licenses would expire according to the individual license holder's birth date.

**License application fees.** The bill would specify that license fees related to insurance licensing for surplus lines agents, insurance agents, and insurance adjusters were license application fees. The bill would require an applicant for a license renewal to remit the application fee before the expiration of the license being renewed. Expiration and renewal of a license would be governed by Insurance Code, ch. 4003 as amended by the bill, in addition to rules adopted by the commissioner and any applicable provision of the bill or another Texas insurance law.

**Prorating fees.** The bill would specify that the TDI commissioner could not prorate the initial application fee for a license based on the expiration period of the license.

Continuing education requirements. The bill would not change the continuing education requirement for a license issued or renewed on or after the bill's effective date. The bill would specify that a license holder could not be required to complete additional continuing education hours for a license that the bill would allow to be extended beyond its original expiration date.

**Effective dates.** The bill would take effect January 1, 2016 and would

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apply only to a license for surplus lines agents, insurance agents, and insurance adjusters issued or renewed on or after that date.

Each license held on January 1, 2016 by a non-individual would expire on the expiration date of the license with the longest remaining term. Each license issued to an individual would expire or could be extended to expire on the individual's birthday in the year after the expiration date of the license with the longest remaining term. If an existing license was extended, TDI could not charge an additional fee or require a renewal application before the renewal date established by the bill.

SUPPORTERS SAY:

HB 1947 would streamline licensing requirements for insurance agents, insurance adjusters, and surplus lines insurance agents, making it easier for license holders to renew their licenses on time and reducing the administrative burden on the Texas Department of Insurance (TDI).

TDI recently has experienced an increase in insurance agent and adjuster license requests, which has strained the agency's resources. The bill would streamline administration of these requests, reducing the time it would take for the agency to handle licensing. Many agents and adjusters also hold more than one insurance license, and current laws make it difficult for these individuals to keep track of their licenses' separate renewal dates. By setting a common renewal date for these licenses, the bill would ensure that agents did not forget to renew their licenses, which would have the additional benefit of protecting consumers using insurance services.

Aligning agent and adjuster license renewal dates for the same date every two years also was a recommendation by TDI in its biennial report to the 84th Legislature. The bill would implement this recommendation. To align the expiration dates for these licenses, it is unavoidable that all of a license holder's licenses would have to expire on the same date.

OPPONENTS SAY:

Requiring certain license holders' licenses to expire according to the earliest expiration date of all licenses held could cause these license holders to lose money they had already spent on fees for licenses that otherwise would have expired at a later date.

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NOTES: The Senate companion bill, SB 844 by V. Taylor, was referred to the

Senate Insurance committee on April 15.